Reply Brief of Appellant

United States Court of Appeals

for the Ninth Circuit

No. 20402

MONDAKOTA GAS COMPANY, a corporation,

Appellant,

vs.

COLLINS G. REED and
MRS. COLLINS G. REED, et al,

Appellees.

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CASES CITED

REBUTTAL ARGUMENT

The Statement of the case found in Appellee's answer brief is inaccurate and misleading. It is an attempt to confuse this Honorable Court by referring to matters not in this record on appeal and to infer that because appellee alleges something it is proven without any facts to support it.

The Appellee states in its brief that the agreement of June 17, 1952, between Appellant and McElroy was never before the trial court. This is contradictory as he then states on page 18 of his brief "Each complaint attached as an exhibit the purchase agreement of June 17, 1952,°°°", and appellee relies on this to support the decree.

The trial court knew the agreement between appellant and McElroy was recorded in Fallon County. Any attempted transfer by McElroy is subject to the terms of the recorded agreement.

Another example of appellee's double-talk is clearly shown where it is stated that Reed obtained the new separate assignment from McElroy on December 5, 1952. The question of failure of consideration has always been present, as has the fact the assignment was never recorded, as is clearly pointed out by the affidavits of Smith and Hutchinson (Tr. Vol. 1A, pages 216-219) showing the fraud and deceit of McElroy.

The action against McElroy was dismissed because a new agreement was reached which rendered the case moot, i.e., McElroy assigned everything he had to Industrial Gas Co., (Tr. Vol. 1A, pg. 230, lines 7-19), and trial was set down on the calendar and judgment entered

presented to the Bureau of Land Management, and this was known by Appellee. The recording precedence is in the State records. (**U.S. v. Viewcrest Garden Apts. [9th Cir. 1959] 268 F2d 380, pages 382-383.)**

The trial Court should have granted discovery to Appellant in aid of its motion for new trial and appeal so that the truth of the fraud and deceit of the relatives and business partners was disclosed. Justice requires this so that the court cannot be used to perpetrate a fraud.

The attempted transfers from McElroy to Buchtell (May 28, 1953—Tr. Vol. 1A, p. 161, line 25) and Buchtell to Reed (October 24, 1954—Tr. Vol. 1A, p. 161, line 28), are subsequent to the agreement between Appellant and McElroy (dated June 15, 1952—recorded January 12, 1953—Tr. Vol. 1, p. 57 and Tr. Vol. 1A, p. 180) was recorded and the appellee cannot be a bona fide purchaser. The trial court should have granted a new trial and entered judgment in favor of appellant.

Respectfully submitted,
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Attorney for Appellant

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion the foregoing brief is in full compliance with those rules.

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